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THE AMERICAN COMMISSIONER

MIXED CLAIMS COMMISSION

UNITED STATES AND GERMANY

DECISION NO. 22

IN THE MATTER OF

FIXING REASONABLE FEES FOR ATTORNEYS OR AGENTS UNDER THE AUTHORITY OF SECTION 9 OF THE "SETTLEMENT OF WAR CLAIMS ACT OF 1928"

DOCKET NO. 4836

Howard Fleming, doing business under the name of Fleming and Company, Claimant

Bigham, Englar & Jones, Attorneys

CHANDLER P. ANDERSON,

American Commissioner

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MIXED CLAIMS COMMISSION, UNITED STATES AND GERMANY

Established in pursuance of the Agreement between the
United States and Germany of August 10, 1922

CHANDLER P. ANDERSON
American Commissioner

(II)

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The above named claimant has duly filed with the American Commissioner a written request that he fix a reasonable fee to be paid by him to his attorneys, Bigham, Englar & Jones, of New York City, N. Y., as compensation for whatever services have been rendered by them on behalf of and with the authority of the said claimant, such services being of the character described in the provisions of Section 9 of the "Settlement of War Claims Act of 1928".

The claimant has objected to the amount of the fee asked by the attorneys on the ground that it is excessive, and the attorneys have been notified of the filing by the claimant of this request that a reasonable fee be fixed. The attorneys, in response to a request by the American Commissioner for information which they might desire to

have considered by him as showing the reasonableness of the fee asked by them, replied by letter that "in view of the small amount involved we do not desire to make any additional outlay of expenses in the preparation of the formal proof which you suggest. We are entirely prepared to accept in payment of our services whatever fee you may determine to be due from an examination of the case, having before you the correspondence and documents of the United States Agency." This letter from the attorneys has been brought to the attention of the claimant, who has filed a letter in reply, a copy of which has been transmitted to the attorneys.

In this case an award was rendered by this Commission on January 30, 1925, on behalf of the claimant, for $1,800, with interest thereon at the rate of five per cent per annum from August 19, 1915, to the date of payment, which amount represents the value of a quantity of quarry tile belonging to the claimant which was lost when the steamship "Arabic", on which it had been shipped, was sunk by a German submarine on August 19, 1915.

The amount of the fee asked by the attorneys as compensation for their services is fifteen per cent of the amount received by the claimant from the Treasury Department in payment of the award in this case. The attorneys state that a cash retainer of $25.00 to cover incidental expenses in connection with this claim was paid by the claimant to the attorneys and that the payment of the fee above referred to was contingent upon a successful recovery.

The attorneys' letter does not contain a statement of the services rendered by them and the letter from the claimant sets out the attorneys' services in an indefinite manner. The American Commissioner is, therefore, in effect referred by them to the records of this Commission as the basis for determining the amount and value of the attorneys' services.

It appears from these records that this claim was originally taken up with the State Department on February 15, 1916, on behalf of the claimant by Messrs. Steele, DeFriese & Steele, of New York City, who originally acted as his attorneys, but the present attorneys were later substituted for them, and they are not parties to these proceedings. Both the claimant and the present attorneys agree that the claimant retained them at the suggestion of the former attorneys to prosecute this claim.

Accordingly, on December 15, 1922, the claimant executed a power of attorney in favor of these attorneys, Bigham, Englar & Jones, authorizing them "to present, argue, enforce, defend, answer or oppose, compromise or settle, release, collect and receive payment for any and all rights and/or interests and/or claims" which the claimant had or might have had against the German and/or Austrian Governments as a consequence of the war.

These attorneys, on December 30, 1922, submitted to the State Department a document described by them as a memorial asking the Department to present this claim to the Mixed Claims Commission, at the same time stating that it had been impossible to ascertain the amount of items of such claims or to assemble proofs in support thereof or to prepare a more formal memorial thereon, and asking leave thereafter to amend the memorial then submitted and to supply such additional allegations and proofs as may be proper. On January 8, 1923, the American Agency, by reference from the State Department, acknowledged the receipt of the above mentioned document.

Subsequently, on April 16, 1923, these attorneys filed with this Commission the formal memorial in this claim accompanied by the necessary supporting documents, alleging a total loss to this claimant of $2,114.53, including the invoice value of the property lost, the loss of profits on contracts, and cabling expenses incident to the loss. Nothing further was done with reference to this claim until August 1, 1924, when the Acting German Agent offered to consent to the entry of an award by this Commission in favor of the claimant for the amount subsequently awarded. This offer was based principally upon the fact that Germany had previously admitted responsibility for the sinking of the "Arabic."

This offer was communicated to these attorneys by the American Agency on August 2, 1924. These attorneys replied to the American Agency on August 12, 1924, submitting a copy of a letter from the claimant strenuously objecting to the amount offered by the Acting German Agent in settlement of this claim and suggesting that the Acting German Agent be induced to consent to the payment of the claim in full. The Acting German Agent subsequently refused to increase the amount of his offer, and on September 13, 1924, this refusal was communicated to these attorneys. Thereafter, on October

7, 1924, the attorneys informed the Agency that the claimant had consented to the offer originally proposed by the Acting German Agent, which ultimately was embodied in the award of this Commission. The total amount received by the claimant from the Treasury Department in payment of this award amounted to $2,957.33.

Subsequent to the date of this award, this claimant made several vigorous protests against the award made by this Commission on the ground that these attorneys had wrongfully induced him to consent to the offer of the Acting German Agent, and had not properly looked after his interests before this Commission. In answer to these protests the American Agency wrote to the claimant stating that "this is now a matter between you and your attorneys" and that "this matter has received the attention of this Agency, * * * and if you can establish that you did not authorize the acceptance of the offer of the German Agent, it is suggested that you prepare a petition, requesting that the claim be reopened and if you furnish satisfactory evidence to the Agency, a motion will be made to the Commission requesting the reopening of the claim and the entire matter will be submitted to the Commission for its determination of the amount actually due you". Nothing further with reference to this claim was heard from the claimant by the American Agency.

No brief on any question of law or fact was filed by these attorneys with the American Agent, and no conferences were held by them with the American Agent or his representatives.

Now, therefore, considering the character and extent and value of the services rendered by these attorneys, and that the payment of compensation therefor was contingent on securing and collecting an award, and in view of the considerations stated in the American Commissioner's general Jurisdictional and Administrative Decision of September 28, 1928, and after careful examination and full consideration of the information furnished in this proceeding by the attorneys and the claimant and by the records of this Commission pertinent to the questions involved, and after due deliberation thereon,

The American Commissioner decides and fixes as the reasonable fee to be paid by the claimant, Howard Fleming, to his said attorneys, Bigham, Englar & Jones, in this case, the sum of two hundred and

fifty dollars ($250), in addition to the twenty-five dollars ($25.00) already paid by the claimant to these attorneys, the said fee to be paid by the claimant and received by the attorneys as full compensation for all services rendered in the prosecution and collection of this claim, as defined in Section 9 of the "Settlement of War Claims Act of 1928".

Done at Washington, D. C., this 27th day of December, 1928.

CHANDLER P. ANDERSON,
American Commissioner,
Mixed Claims Commission,
United States and Germany.

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